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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 609,016	06 30 2000	Franco X. Milani	3248	2127

7590 01 25 2002

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01 25 2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/16/2000

Applicant(s)

U. S. PAT. & T. M.

Examiner

J. DE VITO

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 12/26/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-65 is/are pending in the application.
- Of the above claim(s) 40-57 is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☐ Claim(s) is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☒ Claim(s) 1-36-65 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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Applicants communication filed 10/18/01, paper no. 9 has been received. Upon further review of the application including the specification and claims, and upon reconsideration, it has been determined that the application contains claims directed to several apparently patentably distinct species which would create a burden to a full and proper examinations of this application. Accordingly, the following election of species is set forth below in regard to the elected invention of Group I, claims 1-43 and 60-65. The USPTO regrets any inconvenience this supplemental, but necessary, action may cause.

This application contains claims directed to the following patentably distinct species of the claimed invention: Two distinct species of nut butter are recited as follows:

Species Ia wherein the nut butter is a low water activity nut butter as recited in claim 10;

Species Ib wherein the nut butter is a high water activity nut butter as recited in claim 11;

In addition, two distinct species of jelly are recited as follows:

Species IIa, wherein the jelly is a high water activity jelly as recited in claim 12;

Species IIb, wherein the jelly is a low water activity jelly as recited in claim 13;

Applicants are required to elect one species of nut butter and one species of jelly with the proviso that the species of nut butter and jelly elected are disclosed as being compatible with each other.

In addition, three distinct species of forming methods (and the associated apparatus) are recited as follows:

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Species IIIa, wherein the food portion is extruded to form a laminate food slice using planar-shape extrusion nozzles as recited, for example, in claim 14;

Species IIIb, wherein the food portion is shaped or oriented in an alternating generally striped shaped pattern as recited, for example, in claim 25;

Species IIIc, wherein the food portion is shaped using concentric extrusion tubes to provide a variegated format as recited, for example, in claim 27;

Applicants are required to elect one of species IIIa, IIIb or IIIc.

Finally, apparently three distinct types of sensing mechanisms are recited and one of the following mechanisms are required to be elected:

Species IVa, mass flow meters;

Species IVb, transducers;

Species IVc, level sensors;

2) No claim- appears to be generic to all of the distinct species

In summary, applicants are required to elect one species each of species Groups I, II, III, and IV.

Applicants attention is directed to the paragraph above that points out that if applicants feel that any of the groups of species are not patentably distinct, they should point out in the record which, if any, of the species are obvious variants.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Weinstein whose telephone number is (703) 308-0650. The examiner can normally be reached on Monday - Friday from 7:00 a.m. to 3:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or should be directed to the receptionist whose telephone number is (703) 308-0661.

Examiner Weinstein/ng

January 24, 2002

Steven Weinstein
STEVEN WEINSTEIN
PRIMARY EXAMINER
ART UNIT 132 / 701
1/25/02